

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

40387

FILE: B-179788

DATE: January 29, 1974

MATTER OF: Central Brace Company

DIGEST: Protest to GAO based on allegation that specifications were inadequate and ambiguous held untimely due to protestant's failure to file protest with procuring activity prior to bid opening. Furthermore, its allegation that awardee would not furnish VA with products which would satisfy requirements of IFB is for determination by VA, and in absence of evidence in record indicating bad faith or impropriety in conduct of procurement, award of contract will be upheld.

No basis for relief to assertions that estimated quantities of certain prosthetic appliances stated in IFB did not accurately reflect the actual requirements of the hospital, since estimates were based on best information available to contracting officer at time of solicitation, and there is no evidence of bad faith or misrepresentation.

On June 23, 1973, invitation for bids (IFB) No. 543-4-74 was issued by the Chief, Supply Service, Veterans Administration (VA) Hospital, Columbia, Missouri, soliciting bids for prosthetic appliances, supplies and/or repair services. Bids were opened on August 8, 1973, at which time Central Brace Company (Central) submitted the second lowest bid. Central's protest to VA, dated August 30, 1973, against the award of the contract to Columbia Prosthetics, Inc., was based on the allegation that the difference in price between its bid and that of Columbia Prosthetics (Columbia), could be attributed in part to Columbia's purposely submitting a ridiculously low bid on items where many were required and bidding terribly high where only a few were involved. Such an allegation gives rise to the implication that Columbia may have submitted an unbalanced bid based on reliable information it obtained from its prior dealings with the hospital as to the actual requirements of the hospital in regard to certain items, notwithstanding the estimated quantities enumerated in the IFB. Central also alleged that the low bidder, Columbia Prosthetics, would not furnish the hospital with items which would satisfy the minimum requirements of the IFB. Finally, Central

contended in its submission that it had ~~not~~ received fair and equitable treatment in the award of the ~~contract~~, that politics and friendship were involved to its detriment, and that one of the reasons the award was made to Columbia Prosthetics was that its owner is handicapped. On September 21, 1973, Central's protest was denied by the VA Hospital, whereupon Central filed a similar protest with our Office on September 25, 1973.

In regard to Central's allegation that the quantities of certain items delineated in the IFB, upon which bids were based, did not accurately reflect the actual requirements of the hospital, our Office has consistently held that unless it can be shown that the estimates of the requirements were misrepresented or were not based on the best information available, or bad faith or fraud was exercised in estimating the requirements, there is no basis for relief. See B-177658, April 30, 1973; B-176750, March 27, 1973. In B-173356, September 27, 1971, our Office stated further:

"* * * We believe * * * that a showing of good faith requires that a determination of the estimated requirements be based on the best information available at the time the estimates are formulated. * * *"

The record indicates that the hospital used as a guideline for its prosthetic requirements the specifications and quantities that were used for the past several years at the VA Hospital, Oklahoma City, Oklahoma. The specifications were adjusted to meet its specific needs, and the quantities were adjusted based on the hospital's very limited past experience, and its anticipated future needs. It was further pointed out that the hospital was new and that the IFB in question was its first formally advertised solicitation for prosthetic appliances and services. Therefore, since it appears to our Office that in the present case the estimated requirements were prepared in good faith and were based on the best information available to the contracting officer at the time, we have determined there is no legal basis upon which to object.

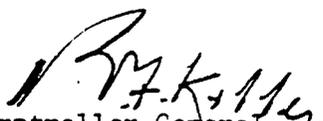
As to Central's contention that the hospital would not receive items which would satisfy the requirements of the IFB, we concur with the position taken by the contracting officer that since the hospital had previously received items from the low bidder for several months without incurring any problems, there is no apparent reason to doubt that future items will not conform to the specifications. Further, since Columbia's bid was unqualified and unconditioned, the award would obligate it to furnish the specified products

required by the IFB. In any event, our Office has consistently taken the position that the procuring activity has the primary responsibility for drafting specifications which reflect the minimum needs of the Government, as well as the responsibility of determining whether the particular product offered meets the specifications. 44 Comp. Gen. 302 (1964); 38 Comp. Gen. 190 (1958). In the absence of clear and convincing evidence indicating that the specifications as written, or the product being offered, do not reflect those minimum needs, our Office will not object thereto. B-175493, April 20, 1972.

In regard to Central's contention that it had not been treated fairly and equitably by the contracting officer for the VA and that the contract was awarded to Columbia due to its owner being hand-capped, our Office has determined that the record does not substantiate such allegations. In the instant case, the record contains no evidence to indicate that Central was placed at a competitive disadvantage or that all offerors were not given an equal opportunity to compete on an equal basis for the contract in question.

Finally, the record indicates that some time after bid opening, but before award, Central alleged that the specifications detailed in the IFB were inadequate and ambiguous and, thus, did not provide sufficient information upon which to make a reasonable and accurate bid. In this regard, the Interim Bid Protest Procedures and Standards of our Office (4 CFR section 20.2(a)), a copy of which Central received, require that protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of proposals shall be filed prior to bid opening or the closing date for receipt of proposals. Since Central's protest concerning these improprieties in the solicitation was not received by the procuring activity until after the bid opening and closing date for receipt of bids, it was untimely and will not be considered by our Office, B-178182, April 19, 1973.

Accordingly, we must conclude that there is no adequate legal basis to question the propriety of the award of the contract to Columbia, and Central's protest against such award must therefore be denied.


Deputy Comptroller General
of the United States